

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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|------------------------|---|-----------------------------|
| GARY T. HARRELL, |) | No. C 05-5035 JSW (PR) |
| |) | |
| Petitioner, |) | ORDER DENYING MOTION |
| |) | FOR RELIEF FROM |
| vs. |) | JUDGMENT |
| |) | (Docket nos. 14, 15) |
| S. W. ORNOSKI, Warden, |) | |
| |) | |
| Respondents. |) | |

Petitioner, a state prisoner currently incarcerated at San Quentin State Prison in San Quentin, California, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court issued an order to show cause and on July 5, 2006, Respondent filed a motion to dismiss the petition on the grounds that the petition was untimely and that it failed to state a claim for federal habeas relief (docket no. 5). Petitioner filed an opposition to the motion (docket no. 6) and Respondent filed a reply (docket no. 7). On March 12, 2007, this Court granted Petitioner's motion to dismiss the petition as untimely. Petitioner now moves the Court for reconsideration under Federal Rule Of Civil Procedure 60(b)(6) (docket no. 14) and for the Court's consideration of a recent California state court decision (docket no. 15).

Where the court's ruling has resulted in a final judgment or order (e.g., after dismissal or summary judgment motion), a motion for reconsideration may be based on Rule 59(e) (motion to alter or amend judgment) or Rule 60(b) (motion for relief from

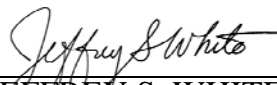
1 judgment) of the Federal Rules of Civil Procedure. *See Am. Ironworks & Erectors v. N.*
2 *Am. Constr. Corp.*, 248 F.3d 892, 898-99 (9th Cir. 2001). Motions for reconsideration
3 should not be frequently made or freely granted; they are not a substitute for appeal or a
4 means of attacking some perceived error of the court. *See Twentieth Century - Fox Film*
5 *Corp. v. Dunnahoo*, 637 F.2d 1338, 1341 (9th Cir. 1981).

6 Rule 60(b) lists six grounds for relief from a judgment. Such a motion must be
7 made within a "reasonable time," and as to grounds for relief (1) - (3), no later than one
8 year after the judgment was entered. *See Fed. R. Civ. P. 60(b)*. Rule 60(b) provides for
9 reconsideration where one or more of the following is shown: (1) mistake, inadvertence,
10 surprise or excusable neglect; (2) newly discovered evidence which by due diligence
11 could not have been discovered before the court's decision; (3) fraud by the adverse
12 party; (4) the judgment is void; (5) the judgment has been satisfied; (6) any other reason
13 justifying relief. *Fed. R. Civ. P. 60(b); School Dist. 1J v. ACandS Inc.*, 5 F.3d 1255,
14 1263 (9th Cir.1993). "Rule 60(b) [] provides a mechanism for parties to seek relief from
15 a judgment when "it is no longer equitable that the judgment should have prospective
16 application," or when there is any other reason justifying relief from judgment. *Jeff D. v.*
17 *Kemphorne*, 365 F.3d 844, 853-54 (9th Cir. 2004) (quoting *Fed. R. Civ. P. 60(b)*).

18 In the motion, Petitioner has not met the criteria for relief from judgment on any
19 of these bases. As such, Petitioner's motions to reconsider is DENIED (docket nos. 14,
20 15).

21 IT IS SO ORDERED.

22 DATED: June 6, 2007

23 
24 JEFFREY S. WHITE
25 United States District Judge
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

HARRELL,

Plaintiff,

v.

ORNOSKI et al,

Defendant.

Case Number: CV05-05035 JSW

CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 6, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gary T. Harrell
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Dated: June 6, 2007


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk